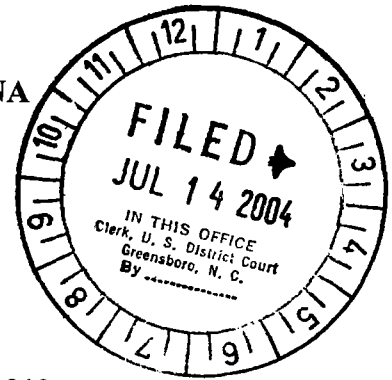


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ENTERED ON DOCKET
JUL 15 2004

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA



BY:

E. LOWELL MASON,

Plaintiff,

v.

SUSAN L. SOWELL, J. CRAIG
WHITLEY, GERALDINE T.
CROCKETT, and GRAHAM C.
MULLEN,

Defendants.

1:03CV01012

ORDER AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Procedural History

On October 28, 2003, the complaint in this action was filed. In the caption, the Plaintiffs were identified as ITC of the Carolinas, Inc.; E. Lowell Mason; May Gray Mason; Ann Mason Norton; and Belhaven Developement [sic] Corp. The Defendants were identified as Susan L. Sowell, J. Craig Whitley, and Geraldine T. Crockett. J. Craig Whitley is a Bankruptcy Judge in the Western District of North Carolina, and Geraldine T. Crockett is the Clerk of the Bankruptcy Court. Susan L. Sowell is the court-appointed Trustee of the bankruptcy estate of E. Lowell Mason pending in the Western District. Although the complaint purported to be filed on behalf of the five plaintiffs identified above, the complaint was signed only by E. Lowell Mason, and therefore represents his complaint alone. All other purportedly named plaintiffs are not properly before the court and have made no appearance in this action. *See* Fed. R. Civ. P. 11(a) (every pleading shall be signed by the party or an attorney for the party.)

The complaint reads in full:

- 1) Plaintiffs are residents of Davidson County and are citizens of the United States.
- 2) Defendants are residents of Mecklenburg County and are citizens of the United States to the best knowledge of the Plaintiffs.
- 3) Personal jurisdiction is hereby attached.
- 4) The COMPLAINT addresses damages made under color of office as individuals.
- 5) And that the actions are brought not against their respondent superiors but as individuals, as they have used that office as pretense for their actions.
- 6) That these individuals as well as others have caused a fraud upon the court.
- 7) To attempt to achieve their ends by way of illegal means.
- 8) To address these illegal means and the fraud is to address, Rule 60 and the exhibits attached, (a), (b), (c), (d), and (e) if needed, to reference an attempt of these parties to secure an entry of default, October 7, 2003.
- 9) MATERIAL FACTS:
 - a) Actions were commenced, October 30, 2002 pursuant to a Chapter 13 proceeding.
 - b) case 02-33458 was converted, January 21, 2003 to a Chapter 7 proceeding, against the debtors objections.
 - c) on about March, 2003, trustee commenced her action, 03-3026,

to which the plaintiff(debtor) pled to the allegations, denying the core proceeding, et al., etc., SEE, EXHIBIT E.
 - d) to which the proceedings progressed to debtor taking a voluntary dismissal of its petition, July 28, 2003, plus the filing of notice of appeal, July 28, 2003, docketed, July 30, 2003.
 - e) Yet the bankruptcy court and the trustee have continued to address these matters,

02-33458 & 03-3026,

up and to the point of the trustees actions, to wit:

JUDICIAL NOTICE: the exhibits attached will show how she, the trustee, noticed the hearing, it will show how she mailed her service, and ref. the date of the entry of default.

- f) they will also show how the court and the clerks office have aided and assisted in these matters, because without their help, how could all this have happened.
- g) that said court (bankruptcy), would not disqualify itself from these actions, even denying the motion on its own direction (order),

JUDICIAL NOTICE: these current and past actions of the court now prove why the disqualification was sought, and why the court refused it.

- h) that the court (bankruptcy) instructed the clerks office not to dismiss the action, 02-33458 & 03-3026 ,

THAT BECAUSE UNDER NORMAL CIRCUMSTANCES AND HOW THESE ACTIONS HAVE PROGRESSED, PURSUANT TO CODES AND RULES, HAVE CALLED FOR THE COURT AND/OR THE TRUSTEE, TO HAVE DISMISSED THESE ACTIONS, LONG AGO. . .

FURTHER, AT ONE POINT, THE COURT (bankruptcy) in its orders, DENIED AND ORDERED THAT THE DEBTOR WAS TO MAKE NO FURTHER FILINGS . . .

- i) Further, to allow the trustee to bring its current action, addressing, 02-33458 & 03-3026, for entry of default, by and through the clerk and/or the court, or BOTH, is a FRAUD in scope hard to comprehend, stating, "debtor has not responded and/or pled to the complaint,"

is a total fraud, in and of itself, and a,

FRAUD UPON THE COURT.

and deprives the debtor (plaintiff) of substantial Constitutional Rights, beyond that of DUE PROCESS.

- j) Further, the debtor (plaintiff) has additional rights that these proceedings take from the plaintiff and the damages these actions are causing or have caused.

(Pleading No. 1.)

For relief, Plaintiff Mason requests compensatory damages in excess of \$455,000, punitive damages in excess of \$1,365,000, and attorney's fees (despite the fact that Plaintiff is not represented by an attorney).

Plaintiff Mason filed a "Supplement to Complaint" on October 31. In the supplement he appears to add a "tort claim," apparently based upon an assertion that the Western District of North Carolina "does not have jurisdiction," but continues to proceed with bankruptcy proceedings against him. (*See* Pleading No. 4.)

On December 12, *pro se* Plaintiff Mason filed a "Notice of Additional Party(s)," seeking to add as a Defendant Graham C. Mullen, United States District Judge for the Western District of North Carolina.¹ (Pleading No. 12.) And on December 23, Plaintiff Mason attempted to file an additional "Supplement to Complaint," (Stricken) further complaining about proceedings in the Bankruptcy Court for the Western District of North Carolina.

On December 31, Defendant Sowell filed a motion to dismiss or for a change of venue to the District Court for the Western District of North Carolina. (Pleading No. 14.) The "Federal Defendants" (Judge Mullen, Judge Whitley, and Clerk Crockett) filed a motion and memorandum to dismiss on February 27, 2004. (Pleading No. 19.)

¹ The request for leave to join Judge Mullen (Pleading No. 12) is **GRANTED**, but, as is set out below, Plaintiff has voluntarily dismissed his claims against Judge Mullen.

Plaintiff Mason filed a “Motion to Dismiss” and “Motion for Entry of Default” on March 26. He argued that Defendant Sowell was in default for failure to file a timely answer, and he requested an entry of default. (Pleading No. 24.) Plaintiff also filed a “Motion for Voluntary Dismissal,” giving notice that he was voluntarily dismissing his claims against Defendants J. Craig Whitley, Graham C. Mullen, and Geraldine T. Crockett. (Pleading No. 25.)

Discussion

Plaintiff E. Lowell Mason is the sole Plaintiff who has made a proper appearance under Rule 11 in this action. Accordingly, **IT IS ORDERED** that the caption be, and hereby is, amended to show only E. Lowell Mason as a party plaintiff in this action.

Plaintiff Mason’s voluntary dismissal of this action against Judge Mullen, Judge Whitley, and Clerk Crockett (Pleading No. 25) is fully effective under Rule 41(a)(1) and formally ends this case as to those Defendants. No order of the Court is required to effectuate this dismissal.

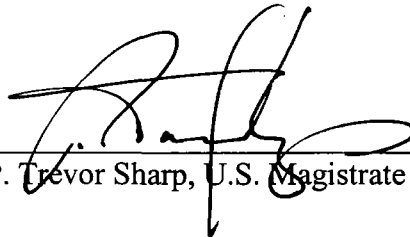
Plaintiff Mason’s request for entry of default as to Defendant Sowell (Pleading No. 24) should be denied. Defendant Sowell responded to the complaint within the proper time as extended by an order of the court. (*See* Pleading No. 10.)

The remaining matter before the court is Defendant Sowell’s motion to dismiss or to transfer venue. (Pleading No. 14.) It is apparent from the pleadings that Defendant Sowell is a resident and citizen of Mecklenburg County in the Western District of North Carolina, and the bankruptcy proceedings giving rise to Plaintiff’s complaint are pending in the Western District. Therefore, venue does not lie in the Middle District, and this action should be dismissed pursuant to 28 U.S.C. § 1406(a), the court finding transfer not to be in the interest of justice. *See* 28 U.S.C. § 1391(b) (where federal question jurisdiction is alleged, action may be brought only where (1) any defendant

resides, (2) substantial part of the events occurred, or (3) any defendant may be found if there is no district where action may otherwise be brought.)

Conclusion

For the reasons set forth above, **IT IS RECOMMENDED** that Plaintiff's request for entry of default (Pleading No. 24) be denied, that Defendant Sowell's motion to dismiss (Pleading No. 14) be granted, and that this action be dismissed. **IT IS ORDERED** that Plaintiff's request for leave to join Judge Mullen (Pleading No. 12) is **GRANTED**. By notice filed March 26, 2004, Plaintiff has voluntarily dismissed his claims against Defendants Judge Whitley, Judge Mullen, and Clerk Crockett. (Pleading No. 25.) The voluntary dismissal is effective pursuant to Fed. R. Civ. P. 41(a)(1), and the Clerk shall close the file as to these Defendants. The motion to dismiss (Pleading No. 19) filed by Judge Whitley, Judge Mullen, and Clerk Crockett is dismissed as moot.



P. Trevor Sharp, U.S. Magistrate Judge

July 14th, 2004